

**SUMMARY ANALYSIS OF AMENDED BILL**

Author: Wright & Bradford Analyst: William Koch Bill Number: SB 830  
 Related Bills: See Prior Analysis Telephone: 845-4372 Amended Date: April 27, 2011  
 Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Trade Infrastructure Investment Tax Credit

**SUMMARY**

This bill would create a trade infrastructure investment tax credit under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL) for taxpayers that invest in, and use, public port facilities in California.

**RECOMMENDATION AND SUPPORTING ARGUMENTS**

No position.

**Summary of Amendments**

The April 27, 2011, amendments struck and reinserted, with some technical changes, the trade infrastructure investment credit provisions of this bill. As a result of the amendments, the "This Bill" and "Implementation Considerations" sections of the department's analysis of this bill as amended April 12, 2011, have been revised. The "Technical Considerations" section is no longer applicable. The "Economic Impact" section has been restated for convenience. The remainder of the department's analysis of this bill as amended April 12, 2011, still applies.

**THIS BILL**

For taxable years beginning on or after January 1, 2011, and before January 1, 2021, under the PITL and CTL, this bill would allow a trade infrastructure investment tax credit of up to five percent of the total capital costs for each year for a qualified taxpayer that has completed a qualified project constructed in this state. The credit may not exceed 50 percent of the total capital costs of each qualifying project constructed in the state.

This bill would provide the following definitions:

- "Capital costs" would mean all costs and expenses incurred in connection with the acquisition, construction, installation, and equipping of a qualifying project during the period commencing with the date on which the acquisition, installation, or equipping began and ending on the date in which the qualifying project was placed in service by one or more qualified taxpayers. Costs incurred prior to January 1, 2011, would be excluded as "capital costs" and ineligible for the tax credit.

Board Position:

\_\_\_\_\_ S      \_\_\_\_\_ NA        X   NP  
 \_\_\_\_\_ SA      \_\_\_\_\_ O      \_\_\_\_\_ NAR  
 \_\_\_\_\_ N      \_\_\_\_\_ OUA

Asst. Legislative Director

Date

Patrice Gau-Johnson

05/04/11

- “Qualified taxpayer” or “qualifying taxpayer” would mean a taxpayer who is qualified by the Franchise Tax Board (FTB) for the receipt of a credit.
- “Qualified project” or “qualifying project” would mean a project completed by one or more qualifying taxpayers that meets all of the following requirements:
  1. The total capital cost of the project may not be less than \$5 million.
  2. The predominant trade or business activity to be conducted at the project site must constitute industrial, warehousing, or port and harbor operations and cargo handling, including any port and port harbor activity, as defined.
  3. The project is certified by the FTB, as specified.

In addition, this bill would define a number of other terms, including: port or port and harbor activity, project, and public port.

Under this bill, the FTB would not certify a project unless a public port adopts a resolution determining that the project would generate sufficient revenue for the state to offset the cost to the state of providing the tax credits.

A taxpayer seeking certification of a project would be required to submit an application to the FTB and the applicant would be required to pay a fee to cover the costs of the FTB’s review and evaluation of the application. Upon approval of the application, the FTB would be required to issue a certification, as specified, to a qualified taxpayer that the qualified project complies with the provisions of this bill.

Under this bill, a taxpayer may not claim a credit authorized by this bill, or reduce any estimated tax payments, unless the Legislature enacts a statute specifying the total amount of the credit allowable. The FTB would be required to notify the qualified taxpayer within 90 days of any tax credit authorization legislation signed by the Governor, as well as his or her pro rata share of the credit if the total amount authorized by the Legislature is less than the aggregate amount of the credit certified by the FTB.

Under this bill, any taxpayer that sells, transfers, or otherwise disposes of a qualifying project within ten years of the taxable year in which the credit was first claimed, would be required to recapture the credit, as specified.

This bill would allow the credit to be carried forward up to 11 years and specifies that any carried over amounts in any year could not exceed five percent of the total capital costs.

This bill specifies that if the total amount of the credit allocated to a qualified taxpayer, when combined with the total deductions taken with respect to the capital costs of the qualifying project, exceeds the total capital costs of the qualifying project, further deductions, depreciation, or credits could not be taken by a taxpayer with respect to the capital costs of the qualifying project. The bill also specifies if another deduction is claimed for the capital costs of a qualifying project, the credit authorized under this bill would not be allowed for those capital costs.

Under this bill, the FTB would be required to submit notice of its certification of a project to the Department of Finance, the Joint Legislative Budget Committee, and the Legislative Analyst.

This bill would require the Legislative Analyst's Office, by January 1, 2020, to prepare an evaluation of the effectiveness of the tax credit and the economic impact of the tax credit on the port and maritime industry located in California and regionally.

### IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

- The bill's language would only allow the tax credit for a taxpayer that has completed a qualified project. If a project takes several years to complete, the taxpayer may be unable to claim the full amount of the credit because the amount that may be claimed per year is limited to five percent of the costs. For example, if a taxpayer completes a project in 2016, he or she would only be able to claim 25 percent of the total costs before the credit sunsets by its own terms.
- The recapture provisions of this bill would apply unless "an equivalent balance of the credit is expressly assigned to a new owner of the qualified project in question and the assignment is approved by the FTB." The bill fails to provide a mechanism for such assignment and methodology of how the FTB would approve such assignment. Current law provides limited authority for credit assignment among affiliated corporations that are members of the same combined reporting group. In addition, it is unclear how or why "an equivalent balance of the credit" relates to the recapture provision.
- The bill specifies that "capital costs" include "costs otherwise defined as capital costs incurred by the taxpayer where the qualifying taxpayer is the lessee under a lease that contains a term of not less than five years and is characterized as a capital lease for federal income tax purposes." For federal and state tax purposes, there are "true leases" where the tax owner of the property remains the lessor, and "finance leases" where the tax owner is the lessee. The meaning of "capital lease for federal income tax purposes" is unclear, although the department would treat the term as a "finance lease" under the above definition.

- The bill is silent on a taxpayer's recourse if the FTB denies the taxpayer's application for project certification. It is unclear if the author's intent is for the FTB's decision to be final, or if the taxpayer could appeal the decision to the State Board of Equalization or to the courts in this state.
- The bill's use of the terms "qualifying taxpayer" and "qualifying project," as defined, is problematic. For example, the bill defines a "qualifying taxpayer" as a taxpayer "who is qualified by the FTB for receipt of the credit." The bill defines a "qualifying project" as a "project completed by one or more qualifying taxpayers...and which is certified by the FTB." The bill then goes on to specify "a qualifying taxpayer seeking certification of a qualifying project..." If a project must be certified by the FTB to be a "qualifying project," it would be unnecessary for a qualifying taxpayer to seek certification of a qualifying project.
- The bill specifies if "another deduction" is claimed for the capital costs of a qualifying project, the credit authorized under this bill shall not be allowed for those capital costs. The meaning of "another deduction" in the context of this bill is unclear. For example, if the author's intent is to prevent a taxpayer from claiming more than one "credit" for the same capital costs, the bill should be amended to replace "another deduction" with "another credit." If the author's intent is to prevent a taxpayer from claiming the credit this bill would provide and any deductions relating to the capital costs, then the bill should be amended to provide more specificity.
- Because this bill would apply to taxable years already underway, it is recommended the bill be amended to provide the FTB an exemption from the Administrative Procedures Act to enable the department to issue quickly guidance (forms, instructions, guidelines, and other necessary guidance) to ensure timely implementation of this bill.
- The bill would require the Legislature to enact a statute specifying the total amount of the credit allowed to be claimed by "the qualified taxpayer" for the preceding taxable year, which appears to suggest annual legislation would be enacted identifying the amount of credit allowed to each qualified taxpayer, on an individual basis. However, subsequent language in the bill requires the FTB to allocate on a pro rata basis the amount of credit authorized by Legislature if the total amount of credits certified by the FTB is greater than the amount authorized. The author may wish to amend the bill to clarify that the Legislature would determine only the aggregate amount of credit for all taxpayers per taxable year while maintaining the language that would require the FTB to allocate the credit on a pro rata basis.

## **ECONOMIC IMPACT**

### **Revenue Discussion**

The bill does not allow any credits to be claimed until the Legislature enacts a subsequent statute authorizing the utilization of the credits. As a result, this bill would not have a revenue impact. The parameters of this bill suggest that if future authorizations allow full utilization of the credit, the revenue loss from those future Legislative actions could be could be tens of millions of dollars per year.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

## **LEGISLATIVE STAFF CONTACT**

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